

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

**AMBER YEAROUT,**

Plaintiff,

v.

**MICHAEL J. ASTRUE,**  
Commissioner of Social Security,

Defendant.

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Civil Action No. 3:10-CV-0430-L

**ORDER**

Before the court are Plaintiff's Opening Brief, filed July 12, 2010; Defendant's Motion for Summary Judgment, filed September 9, 2010; the Findings, Conclusions, and Recommendation of the United States Magistrate Judge ("Report"), filed October 26, 2010; and Defendant's Notice to the Court on the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, filed November 8, 2010.

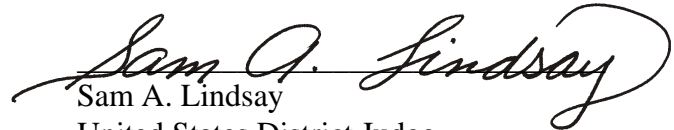
Amber Yearout ("Plaintiff" or "Yearout") filed this action seeking judicial review of a final decision of the Commissioner of Social Security, who denied her application for disability benefits under Title XVI of the Social Security Act. Pursuant to 28 U.S.C. § 636(b), and an order of the court in implementation thereof, the case was referred to United States Magistrate Judge Irma Ramirez, for review and submission of proposed findings of fact and recommendation for disposition. Michael J. Astrue (the "Commissioner" or "Defendant") filed a Motion for Summary Judgment on September 9, 2010. On October 26, 2010, the magistrate judge filed her Report, in which she recommended that the court reverse the Commissioner's decision and remand this case

to the Commissioner for further proceedings. On November 8, 2010, the Commissioner filed a notice that no response would be filed.

Plaintiff presents the following issues for review: (a) whether the Administrative Law Judge (“ALJ”) properly assessed the opinion of Plaintiff’s treating psychologist, Dr. Roberta Berger, Ph.D (“Dr. Berger”); (b) whether substantial evidence supports the ALJ’s finding; and (c) whether the ALJ’s credibility finding is supported by substantial evidence. Pl.’s Br. at 2. After reviewing the record, the magistrate judge concluded that the ALJ improperly assessed the opinion of Dr. Berger. The magistrate reasoned that the ALJ failed to perform the six-factor analysis outlined in 20 C.F.R. § 404.1527(d)(1)-(6) before rejecting Dr. Berger’s opinion. *See* § 404.1527(d)(1)-(6). The magistrate judge further concluded that the ALJ failed to consider all of the evidence in the record. The magistrate judge concluded that the ALJ’s failure to consider all of the evidence and to conduct the six-part analysis under 20 C.F.R. § 404.1527(d)(1)-(6) was reversible error. Since remand is required on this issue, and its determination could affect the remaining two issues for review, the magistrate recommended that the court not consider the remaining issues. The court agrees.

After an independent review of the pleadings, file, record, applicable law, and the magistrate judge’s findings and conclusions, the court determines that the magistrate judge’s findings and conclusions are correct. The court therefore **denies** the Commissioner’s Motion for Summary Judgment. The court **grants** Plaintiff’s request to remand this case to the Commissioner for reconsideration of Dr. Berger’s opinion under the factors set out in 20 C.F.R. § 404.1527(d). Accordingly, the court **reverses** the Commissioner’s final decision and **remands** this case to the Commissioner for further proceedings consistent with this order.

**It is so ordered** this 30th day of November, 2010.

  
Sam A. Lindsay  
United States District Judge